IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977
No. 77-533

In re the Marriage of
ANGELA and JESS H. HISQUIERDO.

JESS H. HISQUIERDO,

Petitioner,

vs.

ANGELA HISQUIERDO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

RESPONDENT'S BRIEF

RAY C. BENNETT
624 South Grand Avenue
Suite 2620
Los Angeles, California 90017
(213) 489-2205

Attorney for Respondent

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977
No. 77-533

In re the Marriage of
ANGELA and JESS H. HISQUIERDO.

JESS H. HISQUIERDO,

Petitioner,

vs.

ANGELA HISQUIERDO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

RESPONDENT'S BRIEF

RAY C. BENNETT
624 South Grand Avenue
Suite 2620
Los Angeles, California 90017
(213) 489-2205

Attorney for Respondent

TOPICAL INDEX

TOPICAL INDEX
(continued)

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES
(Continued)

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1977
No. 77-533

In re the Marriage of ANGELA
and JESS H. HISQUIERDO

JESS H. HISQUIERDO,

Petitioner,

vs.

ANGELA HISQUIERDO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

RESPONDENT'S BRIEF

QUESTION PRESENTED:

The questions for review as phrased by petitioner beg the real issue in the case. The issue is whether by treating railroad retirement benefits as community property upon the dissolution of marriage, California has encroached upon any over-riding federal interest, contravened any expressed congressional intent, or interfered with any federal power.

SUMMARY OF ARGUMENT

California treats retirement benefits as community property upon dissolution of a marriage. Under California law, the courts evaluate the community interest in the benefits whether or not the spouse has any vested right in the pension, whether an employee is receiving pension benefits or

will receive them many years in the future, and even where there is a possibility that a spouse may lose a right to receive the benefits. All pensions and retirement benefits have been treated as community property with the exception of social security benefits. A California Court of Appeal has held otherwise with respect to social security benefits.

This case involves railroad retirement benefits which are funded solely by the railroads and the employees themselves on an equal basis. A railroader's contributions to the federally administered system are deducted from his salary. No federal money is involved in funding the retirement benefits.

The Railroad Retirement Act of 1974, 88 Stat. 1305, 45 U.S.C. (Supp.V) 231-231t, and its predecessor evidence no intent which bears on the issue in this case.

Recent Social Security Act amendments do not involve the issue in this case except to the extent that Congress has become receptive to the plight of older divorced women.

The fact that the Railroad Retirement Act does not provide benefits to divorced spouses does not indicate any intent of Congress that divorced spouses of railroaders cannot rely on state family law concepts to protect their rights. Congress has expressed no such intent and none should be implied, especially where the state domestic relations law does not interfere with the federal scheme.

Before the preemption doctrine can be applied, there must be a conflict between state and federal law, and state law must yield only where state law stands as an obstacle to the accomplishment and execution of the full purposes and

objectives of Congress. To reverse the California decision requires this court to find a purpose of Congress to ignore the security of divorced wives of railroaders. No such intent has ever been expressed by Congress. Furthermore, the California decision does not in any way interfere with the administration of the Railroad Retirement Act.

ARGUMENT

I. A PRESUMPTION EXISTS THAT FEDERAL LAW SHOULD NOT PREEMPT STATE DOMESTIC RELATIONS LAW. FOR THE STATE LAW TO YIELD, THE STATE LAW MUST BE INIMICAL TO FEDERAL OBJECTIVES.

The area of domestic relations law is within the exclusive powers of the state. As was stated by Justice Holmes

in State of Ohio ex rel. Popovici v. Agler, 280 U.S. 379 at 383, "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the state and not to the laws of the United States." The power to make rules to establish, protect and strengthen family life as well as to regulate the disposition of property is committed by the Constitution to the states, Labine v. Vincent, 401 U.S. 532 at 539. It is submitted that this Court, with these principles in mind, in construing the statutes at issue herein must do so with the presumption that Congress did not intend to interfere with state domestic relations law.

The policy of federal non-interference with state domestic relations law means that a federal court does not construe a federal statute to preempt a state statute and an intent of Congress should not be

presumed unless "positively required by direct enactment," Wetmore v. Markoe 196 U.S. 68, 77, or, in otherwords, "unless that was the clear and manifest purpose of Congress." Ray v. Atlantic Richfield Co., 46 U.S.L.W. 4200.

As was stated by this court in United States v. Yazell, 382 U.S. 341, 352, state property interest "should be overriden by federal courts only where clear and substantial interest of the national government, which cannot be served consistently with respect for such state interest, will suffer major damage if state law is applied." No interest of the national government will suffer damage if the California decision is affirmed.

In determining whether or not the California decision conflicts with any federal purpose, this court must determine whether Congress has explicitly or

implicitly prohibited the states from taking that course of action which has been followed by the California Supreme Court. Respondent submits that no such intent can be perceived with respect to the Railroad Retirement Act.

As stated by this court in Rice v. Santa Fe Elevator Corp., 331 U.S. 218 at 230:

> "The [Congressional] purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it. [Citations omitted] or the act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement as the state laws of the same subject. Hines v. Davidowitz, 312 U.S. 52. Likewise, the object sought to be obtained by the federal law in character of obligations imposed by it may reveal the same purpose [citations omitted]."

"Even if Congress has not completely foreclosed state legislation in a particular area, a state statute is void to the extent that it actually conflicts with a valid federal statute. A conflict will be found 'where compliance with both federal and state regulation is a physical impossibility. . .'" Ray, supra, 46 U.S.L.W. 4200, 4201-4202, citing Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132, or where the "state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Ray, supra, citing Hines v. Davidowitz, 312 U.S. 52.

However, it must be kept in mind that as stated by this court, a conflict between federal and state statute will not be implied when none clearly exits. Huron Portland Cement Co. v. City of Detroit,

362 U.S. 813 at 446.

II. WISSNER V. WISSNER, AND FREE V. BLAND, INVOLVED A CONFLICT BETWEEN STATE COMMUNITY PROPERTY LAW AND CLEARLY EXPRESSED FEDERAL PURPOSES EMBODIED IN FEDERAL STATUTES PROMULGATED PURSUANT TO EXCLUSIVELY FEDERAL POWERS WHILE THIS CASE DOES NOT.

It is only through federal preemption pursuant to the supremacy clause of the Constitution that this Court has preempted state family law concepts. The primary case cited by petitioner and the United States for the point that the California decision must be reversed is Wissner v. Wissner, 338 U.S. 655. Also cited is Free v. Bland, 369 U.S. 663. Neither

of these cases support petitioner's contentions. Both cases stand for the point that where state family law concepts interfere with the clearly expressed intent of Congress in enacting legislation bearing on a national power, where the intent of Congress is directly impeded by state law, the state law must yield.

In Wissner the husband enlisted in the army in November, 1942 and in January, 1943, subscribed to a National Service Life Insurance policy, the premiums of which were paid out of the serviceman's salary. As pointed out by this Court, the National Life Insurance Act was a Congressional mode of affording an uniform and comprehensive system of life insurance for members and veterens of the armed forces of the United States, A liberal policy towards the serviceman and his named beneficiary was everywhere evident in the comprehensive

statutory plan.

The controlling section of the Act provided that the insured "shall have the right to designate the beneficiary or beneficiaries of the insurance [within a designated class], . . and shall . . . at all times have the right to change the beneficiary or beneficiaries. . ." 38 U.S.C. §802(g). "Thus Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other." Wissner, supra, at 658.

The National Life Insurance Act provided that the payments to the benficiary should be exempt from the claims of creditors and not be subject to attachment, levy, or siezure by legal or equitable process, 38 U.S.C. §454. This Court suggested that whether the judgment was directed at the very money

received from the government or an equivalent amount, the judgment which ordered the diversion of future payments as they are paid by the government to the serviceman's mother nullified the soldier's choice to designate his beneficiary and frustrated the clearly expressed intent of Congress.

It is significant to note that in Wissner, the act of Congress, which was entirely clear in setting forth the policy that the serviceman should have the absolute right to designate the beneficiary, was promulgated pursuant to the war power of Congress, a federal power delegated solely to Congress, a power the states cannot interfere with.

In Free v. Bland, supra, this court was called upon to determine whether or not treasury regulations creating a right of survivorship in U.S. Savings Bonds preempted any inconsistant Texas community

property laws. The relevant statute, 31 U.S.C. §757C(a), provided that when either co-owner of the bond dies, the survivor will be recognized as the sole and absolute owner. 31 C.F.R.§315.61. Mr. and Mrs. Free purchased U.S. Savings Bonds and after Mrs. Free died, a controversy arose between the husband who claimed exclusive ownership by operation of the treasury regulations, and the son who was the principal beneficiary under Mrs. Free's will claiming an interest in the bonds by virtue of the state community property laws.

This Court held that there was a conflict between the federal law and the state law and the state law had to yield. It is significant to note that the treasury regulations were promulgated pursuant to Article I, §8, Clause 2, of the Constitution which delegates to the

federal government the power "[t]o borrow Money on the credit of the United States." This court noted that the clear purpose of the treasury regulations was to confer the right of survivorship on the surviving co-owner. The federal law was entirely clear in stating "the survivor will be recognized as the sole and absolute owner."

Again, Free v. Bland involved the situation where state community property was held to conflict with federal law promulgated pursuant to a solely federal power, that being the power to borrow money on the credit of the United States. The success of the management of the national debt was deemed to depend on the successful sale of savings bonds and the survivorship provisions afforded a convenient method of avoiding complicated probate proceedings, 369 U.S. at 669.

The Railroad Retirement Act, however, was promulgated pursuant to the power to regulate interstate commerce, as well as apparently, the power to spend money for the general welfare.[1]

---

[1] The Railroad Retirement Act of 1934 was justified on the ground that it promoted efficiency and safety in interstate commerce. The Act was declared unconstitutional by this court in Railroad Retirement Board v. Alton Railroad Company, 295 U.S. 330. Thereafter the 74th Congress introduced new legislation which became the separate Railroad Retirement and Taxing Acts of 1935. The taxing measure and part of the retirement act were declared unconstitutional in Alton Railroad Company v. Railroad Retirement Board, 16 Fed.Supp. 95[illegible]. While the appeal to this court was pending, President Roosevelt met with railroad and labor representatives, changes in the system were agreed upon, and the carriers agreed to drop the litigation and not test the constitutionality of the legislation. A complete history of the Railroad Retirement System through 1972 is discussed in "The Railroad Retirement Systems: Its coming Crisis, Report of the Commission on Railroad Retirement," H.R. Doc. No. 92-350, 92nd Cong. 2d Sess. (1972). This report shows no intent of Congress to preempt state domestic relations law.

The benefits are financed equally by the employers and the employees. Even in the area of interstate commerce, the states may impose legislation which affects interstate commerce as long as the state has not imposed an undue burden on it. See Huron Portland Cement Co. v. City of Detroit, supra.

In Huron Portland Cement, criminal proceedings were instituted against Huron Portland Cement for violations of Detroit pollution laws. The appellant argued that the city ordinance was unconstitutional on the basis that since federal inspection statutes has been complied with, Detroit could not impose additional or inconsistent standards, and secondly, even if Congress had not expressly preempted the field, the municipal ordinance materially affected interstate commerce

where uniformity was necessary.

This Court rejected both arguments and pointed out that to hold otherwise "would be to ignore the teaching of this Court's decisions which enjoin seeking out conflicts between state and federal regulation where none clearly exists." 362 U.S. at 446. This court stated that it could not hold that the local pollution regulations so burdened the federal power to regulate interstate commerce as to be constitutionally invalid. Any state regulation based on police power which does not discriminate against interstate commerce or operate to disrupt any required uniformity may constitutionally stand, 362 U.S. at 448.

The decision of the California court places absolutely no burden on interstate commerce. At the very most, it has been

suggested that California attorneys have requested benefit information from the Railroad Retirement Board. This certainly can in no way interfere with the operation of the railroads of this country, and even the United States has admitted that this burden may be reduced as attorneys become familiar with the Railroad Retirement system. At the very least, this decision affects only California and at the most, the other states adhering to community property doctrines.

The policy of non-interference with state domestic relations law where no conflict is present is clear. In United States v. Yazell, supra, a Texas couple obtained a disaster loan from the Small Business Administration. At the time the loan was made, Texas law provided that a married woman could not bind her separate property unless she first obtained a court

decree removing her inability to contract. Mrs. Yazell had not done so. The federal government sought to collect a deficiency of $4,000 on the loan from Mrs. Yazell's separate property. The question before the court was whether or not there was a federal interest in collecting the deficiency from Mrs. Yazell's separate property which warranted this overriding of the Texas law of coverture. This court held that the state rule governed and stated at page 352:

> ". . .Both theory and the precedents of this Court teach us solicitude for state interests, particularly in the field of family and family-property arrangements. They should be overridden by the federal courts only where clear and substantial interests of the National Government, which cannot be served consistently with respect for such state interests, will suffer major damage if the state law is applied." (Emphasis added.)

In footnote 28 of the Yazell opinion, this Court distinguished Wissner noting that the California court decision in that case was in derogation of the federal statutory policy that soldiers have an absolute right to name the beneficiary of their National Life Insurance.

On page 354, this Court noted that the decisions applying "federal law" to supersede state law typically relate to programs and actions which by their nature are and must be uniform in character throughout the nation. Although the Railroad Retirement Act is uniform throughout the nation in terms of benefits provided, California does not attempt to interfere with the operation of that law, reinterpret that law, or in any way affect the federal law. All the California court decision requires is that the expectation of retirement benefits, which are based on employment

attributable during the marriage be recognized as an asset of the marital community.

III. THE LACK OF BENEFITS FOR A DIVORCED SPOUSE UNDER THE RAILROAD RETIREMENT ACT DOES NOT INDICATE AN INTENT OF CONGRESS TO PREEMPT STATE FAMILY LAW CONCEPTS.

Petitioner argues that Congress has made it clear that as to a divorced spouse, any entitlement to an annuity shall terminate when the spouse and the railroad worker are divorced, citing 45 U.S.C. 231d (c)(B). This statute, however, states that a spouse has no right to receive a spouse's benefit, and merely reflects the fact there is no spouse after divorce. That statute does not indicate any intent of Congress that a divorced spouse shall

be left in poverty on the dissolution of a marriage.

The reason for the existence of a spouse's benefit at all is an interesting inquiry in itself, and leads respondent to the conclusion that the enactment of legislation authorizing a spouse's benefit had nothing to do with Congress' concern for divorced spouses.

No spouse's benefit existed under the Railroad Retirement Act until 1951. Although benefits payable under the Railroad Retirement Act have traditionally been larger than social security benefits, in 1950 social security benefits were raised so significantly that pressure was put on Congress to increase Railroad Retirement benefits. One of the major changes in the 1951 amendments to the Railroad Retirement Act in increasing

the benefit structure was the introduction of the spouses benefit, H.R. Doc. No. 92-350, 92d Cong. 2d Sess. p. 61 (1972). As indicated in this report, a dominant feature of the Railroad Retirement Act since 1935 has been the continual increase in benefits, and especially the desire to maintain a higher level of benefits than available under the Social Security Act.

The United States points out that although Congress has established certain benefits for divorced wives and widows under the Social Security Act, citing 42 U.S.C. (and Supp.V) 402(b)(1), it has not provided equivalent benefits under the Railroad Retirement Act, (Am.Br. 17-18). Without citing any authority, the United States argues that this decision appears to reflect a determination that the sources of the Railroad Retirement

Fund should not be expended for divorced wives. There is no authority for this point. No such evidence appears anywhere in published reports.

The 1966 testimony of the Chairman of the Railroad Retirement Board (Am.Br. 16-17) does little more than indicate an intent of that gentleman, not Congress, that a divorced wife should not be entitled to death benefits, but that such benefits should go to the railroader's children. There is a great distinction, however, between benefits to be received during the railroader's life and benefits awarded after death. This testimony furnishes no aid in determining intent of Congress with regard to the issue at hand.

IV. THE GARNISHMENT STATUTES IN THE RAILROAD RETIREMENT AND SOCIAL SECURITY ACTS DO NOT INDICATE THAT CONGRESS INTENDED TO PROHIBIT APPLICATION OF STATE FAMILY LAW PRINCIPLES TO RAILROAD RETIREMENT BENEFITS.

A) Respondent Does Not Claim an Interest in her Husband's Benefits as a Creditor.

Petitioner argues that the decision of the California Supreme Court conflicts with 45 U.S.C. §231m, the exemption from execution statute (Pet.Br.16) That statute reads in relevant part:

> "Notwithstanding any other law of the United States, or of any state territory, or the District of Columbia, no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any

> "circumstances whatsoever, nor shall the payment thereof be anticipated. . ."

Petitioner's argument assumes that respondent claims an interest as a creditor. She does not. There is no history as to the purpose of that statute other than to insure "that no annuity payments shall be assignable or shall be subject to any tax or legal process," H.R. Rep. No. 1711, 74th Cong., 1st Sess., at 12 (1935). The obvious purpose is to insulate retirement income from the grasp of creditors. The exemption statute protects the railroader and his spouse during the marriage. It would be ironic if that statute can be applied against the spouse after marriage.

The California decision does not place respondent in the same position as a creditor. While a spouse attempting to

garnish retirement benefits to satisfy as alimony obligations can be considered a creditor, a spouse with a community property interest does not claim an interest as a creditor but as an "owner with a present, existing, and equal interest." Phillipson v. Board of Administration, 3 Cal.3d 32, 44.

Community property is that which is acquired by husband and wife or either during marriage which is not the separate property of either, California Civil Code §687. The respective interests are present existing and equal interests, California Civil Code §5105. One theory behind community property is that the marriage "is a community of which each spouse is a member, equally contributing by his or her industry to its prosperity, and possessing an equal right to succeed to the property after dissolution,"

Myer v. Kinzer 12 Cal. 247, 251-252.

One commentator has viewed the rights of a nonemployee spouse in retirement benefits as arising "from the fundamental principle of community property law that both spouses participate in the community and both are entitled to share in its rewards." Note, Dividing the Community Property Interests in Nonvested Pension Rights, 65 Cal.L.Rev. 275, 279 (1977).

California courts have consistently found community property interests in retirement benefits whether based on contractual rights, or on state statute (Phillipson v. Board of Administration, supra) or federal statute. California courts have found a community property interest in federal military retirement benefits, In re Marriage of Fithian, 10 Cal.3d 592, and in a federal civil servant's retirement pension, In re

Marriage of Peterson, 41 Cal.App.3d 642, California does not require a vested right to receive the benefits, In re Marriage of Brown, 15 Cal.3d 126. Therefore, the issue of property or contractual rights of respondent is irrelevant.

It is significant that in Wissner, the wife could be viewed more as a creditor than the respondent could ever by in this case. In September, 1943, the serviceman expressed the wish that he could "find some way of forcing [his estranged wife] to a settlement and a divorce." Wissner, id., at 657. In Wissner, the premiums for the policy were paid out of earnings of the husband while separated. If Wissner were to be tried in California today, a court would be compelled to find that the premiums were paid for with separate property earnings, Civil Code §5118, and the wife would have no claim under any

circumstances. In the case at issue, respondent, however, does not claim an interest in the retirement benefits as a creditor but as a partner in the marital community.

B) Social Security Act Amendments Pertaining to Garnishment of Federal Monies Have No Bearing on this Case.

The United States suggests that Congress has struck a balance between the claims of retired railroaders and their spouses by enactment of Section 459 of the Social Security Act, 42 U.S.C. (Supp.V) 659, (Am.Br. 18-19). The 1974 amendment of this section permitted garnishment of monies due from or payable by the United States to satisfy a child support or alimony payment.

This amendment was not an attempt to strike a balance between railroaders

and divorced spouses. It was an attempt to force an end to the rapid and uncontrolled growth of families on the nation's welfare rolls, S.Rep. No. 93-1356, 93d Cong., 2d Sess., U.S. Code, Cong. and Adm. News 8148. This Senate Report referred to a Rand Corporation study emphasizing the number of middle class families forced on to welfare because of errant husbands and fathers, including well-to-do physicians and attorneys who were able to escape their obligations because of insufficient mechanisms for enforcement of support orders.

The purpose of the amendments was clearly enunciated in Senate Report No. 93-1356, 93d Cong. 2d Sess. (1974) wherein it was stated:

> "The Committee bill is designed primarily to improve State programs for establishing paternity and collecting support for children getting AFDC payments. The

> Committee recognizes, however, that the problem of non-support is broader than the AFDC rolls and that many families might be able to avoid the necessity of applying for welfare in the first place if they had adequate assistance in obtaining the support due from absent parents. Accordingly, the Committee bill would require that the procedures adopted for locating absent parents, establishing paternity, and collecting child support be made available to families even if they are not on the welfare rolls. (Emphasis added.)
>
> 1974 U.S. Code Cong. & Admin. News at 8158.

As pointed out by the United States, Section 459 was affected by a 1977 amendment to the Social Security Act which states that alimony "does not include any payment or transfer of property or its value by an individual to his spouse or former spouse in compliance with any community proeprty settlement, equitable distribution of property, or other division of property between spouses or former spouses." Pub. L. 95-30, Section 501(d),

91 Stat. 160 to be codified at 42 U.S.C. 662(c).

All this statute does is define the term "alimony". A history of the purpose of the definitional amendment does not disclose any intent that Congress intended to preempt state community property law with respect to railroad retirement benefits. All the statute does is further clarify the intent of Congress that divorced spouses should be able to garnish federal benefits to satisfy support obligations. Community property, however, is not a support obligation.

Senator Nunn, the sponsor of the amendment before the Senate, explained the purpose of the amendment, and in doing so emphasized that the purpose was to increase collection of support payments and decrease the number of families on welfare rolls. His intention was set forth

in the following manner (123 Cong. Rec. S6726 (daily ed., April 29, 1977):

> "In my view, these figures are evidence that this program is beginning to work as Congress intended. The intent of these amendments, that I am introducing today will be to clarify the garnishment provisions, to provide for administrative improvements and to aid in the evaluation of the programs. I feel that these amendments will only add to the efficiency and effectiveness of the program."

No reason appears for the failure to include community property settlement obligations in the definitional amendment. It is possible that Congress intended to recognize an existing property interest of the spouses of pensioners. It is also possible that Congress had no concern for such obligations because it was the ability of husbands to avoid their support

obligations which prompted the amendment of §459 in the first place. A community property settlement obligation, however, is not a support obligation.

V. LEGISLATIVE HISTORY REFLECTS A CONCERN FOR THE PLIGHT OF DIVORCED SPOUSES AND NOT ANY DETERMINATION TO PUNISH THEM.

Petitioner asserts that because Congress has determined that a spouse's benefit under the Railroad Retirement Act terminates upon divorce, Congress has determined that a spouse's interest in her husband's pension to be received by him must be terminated (Pet.Br. 18-19). The United States argues further that the determination not to aid divorced spouses is not to be questioned by the states (Am.Br. 18).

There is no legislative history reflecting any determination of Congress that a spouse in community property states should be precluded from protection under state law. To the contrary, Congress has been receptive to the plight of older divorced women. Legislative history evidences an increasing concern.

In 1965, Congress enacted what is now an amendment to the Social Act codified at 42 U.S.C. §416(d), which provided for a divorced spouse's benefit if she was divorced after twenty years of marriage. Congressional history illustrates the concern for divorced spouses under the Social Security Act noting that it is not uncommon for a marriage to end in divorce after many years when the wife is too old to build up social security earnings, and that even if she is able to find a job, and that under the laws then

existing, a wife's right to benefits based on her husband's earnings ended with divorce, S. Rep. No. 404 84th Cong. 1st Sess. (1965) U.S. Code Cong. & Adm. News, Vol. 1, 84th Cong. p. 2047

In 1977, 42 U.S.C. §416(d) was amended to provide that a divorced wife's benefit is payable if she had been married for ten rather than twenty years, Pub. L. 95-216, 91 §337(c) (December 14, 1977). The House version of the bill proposed that the marriage requirement be reduced to five years, however. In a House Ways and Means Committee report the intent of Congress to aid divorced spouses is everywhere evident, particularly at pages 48-49 wherein it was stated:

> "In 1965, the Congress provided benefits for aged divorced wives and aged surviving divorced wives of retired, disabled, or deceased insured workers, subject to a 20-year duration-of-marriage requirement. In providing these benefits, your committee stated that the purpose of doing so was to:

> . . . provide protection mainly for women who have spent their lives in marriages that are dissolved when they are far along in years--especially housewives who have not been able to work and earn social security benefit protection of their own--from loss of benefit rights through divorce.

Generally speaking, with a period of marriage, considerably shorter than 20 years there is a greater likelihood that a divorced person will either qualify for benefits as a spouse in a second marriage or have earnings and qualify for benefits as a worker under social security. Your committee is concerned, however, that older divorced people married less than 20 years may nevertheless reach old age without any social security protection. Accordingly, your committee's bill would reduce from 20 years to 5 years the length of time a person must have been married to a worker in order for benefits to be payable to an aged divorced spouse or surviving divorced spouse."

H.R. Rep. No. 95-702 Part. I, 95th Cong.2d Sess. 48-49 (1977).

In view of the increasing concern of Congress for divorced spouses, it seems incongruous to argue that Congress, in its

wisdom, intended to prevent the states from applying family law principles to protect a partner in a marriage. No such intent exists and none should be implied. To do so would be to depart from the teaching of this court that it will not seek out conflicts between federal and state law where none exists. Huron Portland Cement, supra, at 446.

The fact that legislative choices are available to subject retirement benefits to community property settlements as pointed out by the United States, (Am.Br. 23) does not indicate that California has contravened existing federal law, especially in light of the fact that the California decision has nothing to do with garnishment.

In Wetmore v. Markoe, supra, a New York court denied a restraining order

to prevent the collection of alimony which a husband contended was discharged in bankruptcy. The husband argued that the enactment of an amendment of bankruptcy law excepting an alimony decree from a discharge was legislative recognition that prior to the amendment, an alimony judgment was discharged. This court rejected that argument and indicated the legislation could be referred to show the legislative trend and it could have been passed to resolve the problem of conflicting decisions.

More importantly, this court noted that unless positively required by a direct enactment of Congress, the court should not presume a design of Congress which would enable a husband to escape his support obligations, 96 U.S. at 77.

VI. WITH LITTLE EVIDENCE OF INTENT OF CONGRESS TO GUIDE THE COURT IT CANNOT BE CONCLUDED THAT THE CALIFORNIA COURT HAS CONTRAVENED ANY FEDERAL PURPOSE.

Petitioner argues that to allow the California decision to stand would in effect destroy the very purpose for which the act was created (Pet.Br. 21). As is shown by the 1935 House of Representative's Hearing Report, H.R. Rept. No. 1711, 74th Cong. 1st Sess. 10 (1935), the purpose of the Act was to permit older railroaders to retire and enjoy the closing days of their lives with peace of mind and physical comfort. To accept petitioner's argument would require the court to conclude that until Congress in 1974 permitted garnishment of the

retirement benefits to satisfy support obligations, a husband and father could divorce his wife and evade his responsibilities with the knowledge that his benefits would be free from garnishment.

The lack of benefits for a divorced spouse as well as the lack of spousal benefits at all until 1951 may reflect nothing more than divorce was a rare occurrence at that time. It would not take any statistical analysis to conclude that the divorce rate in the United States has steadily increased over the years. Although the California decision is not a response to this phenomenon, but rather an extension of California community property law, it would require obtuse reasoning to assume Congress intended to prohibit the states from interpreting federal statutes in a domestic relations

matter in a manner that does not disrupt the federally sponsored and privately financed railroad retirement system.

Petitioner attempts to argue that somehow respondent will reap a windfall if the California decision is not reversed, because respondent will be entitled to social security benefits, although failing to mention that railroad retirement benefits are significantly higher than social security benefits. He has also failed to point out the possibility that he may be entitled to a spouse's benefit based on respondent's social security earnings, Oliver v. Califano, UNEMP. INS. REP. ¶15, 244 (N.D. Cal. 1977).[2]

---

[2] In Oliver, the district court found that the differential treatment of male and female divorced spouses, in view of the former statute which required the husband to demonstrate that at least half of his support was derived from his wife in order to be eligible for benefits,

Most significantly, however, this case will have serious repercussions affecting divorced women who are not entitled to social security benefits. Although it is argued that the states are still free to award alimony (Am.Br. 22), in at least one community property state, Texas, alimony cannot be awarded "for the wife after a judgment of divorce has been entered." Francis v. Francis, 412 S.W.2d 29, 39 (Tex. 1967); Vernon's Ann. Tex. Civ. Stat. Art. 232b-1, Sec. 2(6) Art. 2328b-3 Sec. 7. In Texas non-employed spouses of railroader's will be left to depend

---

72 U.S.C. §402(c)(1)(C), was a denial of equal protection. Consequently the one-half support requirement has been judicially eliminated so that a divorced husband is now automatically entitled to benefits based on his wife's Social Security covered employment. Oliver, a class action, was not appealed. As of January 1, 1979, the requisite 20-year marriage period will be reduced to ten years. Pub.L. 95-216, §337(c) (December 14, 1977).

solely on public assistance for support after divorce, while the husband will be able to receive a full annuity, in the event the decision is reversed. This would be clearly contrary to the intent of Congress.

CONCLUSION

The California decision does not conflict with federal statutes nor does it cause any interference with the effective operation of the railroad retirement system. To imply an intent on the part of Congress where none exists, would cause an interference with state family law principles and would in itself conflict with Congress' increasing concern for security of older

divorced women. The decision should be affirmed.

Respectfully submitted,

RAY C. BENNETT
Attorney for
Respondent